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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,094	12/02/2003	Yingfai Cheung	USP2136A-YC	1750
30265	7590	12/08/2005		
RAYMOND Y. CHAN 108 N. YNEZ AVE., SUITE 128 MONTEREY PARK, CA 91754			EXAMINER VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 12/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,094

Applicant(s)

CHEUNG, YINGFAI

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-30 and 35-46 is/are pending in the application.
- 4a) Of the above claim(s) 15-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-30 and 35-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 27-30 and 35-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-32 of copending Application No. 10/725,101. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim and adjustable binding device with head and tail portion closure means consisting of a slot in the head portion engaged by inclined teeth of the holding neck of the tail portion.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-30 and 35-46 are rejected under 35 U.S.C. 102(b) as being anticipated by French Patent FR 2536247 to Vatan.

Regarding Claim 27, Vatan teaches a method for guiding a growing plant via a supporter (applicant has not claimed what kind of supporter or any structural details of the supporter, thus Vatan element #10 is the supporter), comprising the steps of: (a) providing a guiding member having a length substantially long enough to bind around said growing plant with said supporter (Vatan Fig. 2 and 5), wherein Vatan teaches a method of guiding a growing plant utilizing guide member with a head portion (Vatan Fig. 1 #4) and a tail portion (Vatan Fig. 1 #5) and a plurality of locking teeth (Vatan #5') spacedly formed along a longitudinal edge of said tail portion of said guiding member, (b) inherently twisting said tail portion of said guiding member to substantially align with an adjacent edge of a locker slot, having a triangular shape (Vatan #4'), formed at said head portion of said guiding member, wherein said adjacent edge of said locker slot is substantially larger than a width of said guiding member, wherein said locker slot has a width gradually increasing towards said head end of said guiding member, (c) inherently slidably inserting said tail portion of said guiding member through said locker slot to form a binding loop (Vatan Fig. 5) around said growing plant, wherein said tail portion of

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said guiding member is slid along said adjacent edge of said locker slot to adjust a loop diameter of said binding loop corresponding to a distance between said growing plant and said supporter; and (d) twisting said tail portion of said guiding member back to its original orientation such that a holding neck portion of said corresponding locking tooth is locked at said locker slot by a transverse width thereof so as to retain said loop diameter of said binding loop to fittingly bind said growing plant, wherein said transverse width of said locker slot is larger than a thickness of said guiding member and is larger than a width of said holding neck portion of each of said locking teeth; wherein a plurality of elongated slit are spacedly and inclinedly cut along two longitudinal edges of said tail portion of said binding member respectively to form said locking teeth and to define said holding neck portion on said binding member at a foot portion of each of said locking teeth (Vatan Fig. 1 edges of #5').

The method steps of the instant invention are readily apparent during the operation of the device of Vatan.

Regarding Claim 28, Vatan teaches (e) when said growing plant grows to increase a diameter thereof to a grown diameter, releasing said guiding member from said growing plant by twisting said tail portion of said guiding member to align with said adjacent edge of said locker slot to unlock said respective locking tooth with said locker slot such that said tail portion of said guiding member is allowed to slidably eject from said locker slot; (f) slidably releasing said tail portion of said guiding member along said adjacent edge of said locker slot such that said binding loop of said guiding member is adjusted for fitting said grown diameter of said growing plant with respect to said

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supporter; and (g) twisting said tail portion of said guiding member back to its original orientation such that said locking neck portion of said adjacent locking tooth is locked at said locker slot so as to retain said loop diameter of said binding loop to fittingly re-bind said guiding member around said growing plant with said supporter (Vatan English abstract teaches adjusting the size of the loop to accommodate the growth of the plant and English translation page 5 lines 8-11).

Regarding Claims 29 and 30, Vatan teaches a height of said locker slot at least equals to said width of said guiding member (Vatan Fig. 1 #4 and 4').

Regarding Claim 35, 36, 37, 38, Vatan teaches wherein each of said locking teeth has a guiding edge having an outer end formed at said longitudinal edge of said tail portion of said guiding member and an inner end inclinedly and inwardly extended on said guiding member towards said tail end thereof to define said holding neck portion on said guiding member at said inner end of said guiding edge of each of said locking teeth. (Vatan Fig.1 the pointed edges of element 5').

Regarding Claims 39, 40, 41, and 42, Vatan teaches wherein said guiding edge of each of said locking teeth is extended inclinedly at a direction corresponding to an inserting direction of said tail portion of said guiding member such that said locking teeth are allowed to slide through said locker slot at said inserting direction while said locking teeth are blocked up at said transverse width at an ejecting direction which is opposed to said inserting direction (Vatan Fig. 5).

Regarding Claims 43, 44, 45, and 46, Vatan teaches wherein said tail end of said guiding member has a tapered shape having a width substantially smaller than said

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transverse width of said locker slot such that said tapered tail portion of said guiding member is guided to slide through said locker slot when said tail end of said guiding member is inserted there through (Vatan tip of element #5 in Fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-30 and 35-46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over French Patent FR 2536247 to Vatan in view of U.S. Patent Des. 299,307 to Finnigan.

Regarding Claims 27-30 and 35-46, Vatan teaches a method for guiding a growing plant via a support member by providing a guiding member having a length substantially long enough to bind around the growing plant with the supporter. Although applicant has not claimed any structural details concerning the supporter it can be inferred from the specification that applicant may have intended to claim a vertical stake supporter instead of a horizontal wire. Finnigan teaches a plant tie/belt/guide of a length for encircling a plant and a plant stake together (Finnigan title and Fig. 7). Finnigan teaches a head and tail portion, but is silent on the structural details of the claimed head and tail portion closure means. Vatan teaches all of the claimed structural limitations of the head and tail closure portions of the belt and that the guide member is of a length that encircles a support member and a plant. It would have been obvious to

one of ordinary skill in the art to modify the teachings of Finnigan with the teachings of Vatan at the time of the invention since the modification is merely the selection of a known alternate equivalent head and tail closure portion selected for the advantage of being able to adjust the dimension of the guide member to adapt to the growth of the plant as taught by Vatan (Vatan page 5 line 8-11).

Response to Arguments

Applicant's arguments with respect to claims 27-30 and 35-46 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that Vatan teaches the elongated slits are inclinedly cut along the tail portion of the binding member (please see attached Vatan Fig. 1).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: English Translation Japanese Patent JP2000-217447 to Teramoto Tojiro, *The Belt for Garden Tree Failure Prevention*, 2000, 25 pages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

06 December 2005

